

COTTONWOOD HEIGHTS

RESOLUTION NO. 2013-13

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT WITH FOURELS INVESTMENTS CO., LLC FOR WATER USAGE

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met on 9 April 2013 to consider, among other things, approving a "Reimbursement Agreement" (the "*Agreement*") with Fourels Investments Co., LLC ("*Fourels*") whereunder the City would reimburse Fourels for water used to irrigate the City's landscaped island in the public right-of-way near the intersection of 1300 East and Union Park Avenue within City's municipal boundaries, on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Contractor is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2013-13, shall take effect immediately upon passage.

PASSED AND APPROVED this 9th day of April 2013.

COTTONWOOD HEIGHTS CITY COUNCIL



By


Kelynn H. Cullimore, Jr., Mayor


Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 9th day of April 2013.

RECORDED this ___ day of April 2013.

595646.1

Reimbursement Agreement (*Water Usage—Landscaped Island*)

THIS REIMBURSEMENT AGREEMENT (this "*Agreement*") is entered into effective 26 March 2013 by the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and by **FOURELS INVESTMENTS CO., LLC**, a Utah limited liability company whose address is 6995 Union Park Centre, Suite 440, Midvale, UT 84047 ("*Owner*").

RECITALS:

A. City owns an island (the "*Island*") that is located in the public right-of-way near the intersection of 1300 East and Union Park Avenue within City's municipal boundaries. The Island contains landscaping, a City sign, and associated lighting and irrigation apparatus and systems.

B. Owner owns the Park Centre II shopping center (the "*Project*") that is adjacent to, and directly to the East of, the Island. Water to the Project is supplied by Jordan Valley Water Conservancy District ("*JVWCD*"), and the Project's water usage is tracked by a JVWCD meter (the "*Meter*") located on the Project.

C. The Island does not have its own water meter or dedicated water supply. Instead, a water line carrying water from the Project irrigates the landscaping on the Island.

D. The parties desire to formalize their agreement by which water will continue to be provided to the Island and City will reimburse Owner for the cost of such water, as provided in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Owner's Supply of Water to Island.** Conditioned on City's performance of its obligations under this Agreement, Owner shall continue to supply water from the Project's system to the Island as heretofore; provided, however, that Owner may, in its sole discretion, terminate supplying water to the Island at any time upon at least six months' prior written notice to City. The parties acknowledge that the water supply to the Island may be proportionately reduced to the extent that Owner's allocation of water from JVWCD is reduced due to drought, delivery problems, etc. The parties further acknowledge that repairs to or replacement of the supply line from Project's water system to the Island is City's sole responsibility.

Section 2. **City's Reimbursement of Cost.** In the absence of a separate water meter to measure flow from the Project to the Island, the parties agree that so long as Owner supplies water to the Island as heretofore, City will reimburse Owner for a 25% share of JVWCD's charges to Owner for water supplied through the Meter, which currently is charged under JVWCD account no. 8503-107720 to "Fourels Park #2." Owner shall bill City for such amounts annually in arrears, and shall supply with such billing copies of all JVWCD invoices to Owner detailing the underlying water usage and charges. City shall either reasonably object to such billing or fully pay it within 30 days

after receipt of Owner's invoice.

City may, at its sole option and cost, install a subsidiary water meter on the supply line carrying water from the Project to the Island to more accurately track City's usage, in which event the parties shall reasonably cooperate to appropriately allocate financial responsibility for JVVCD's charges to Owner.

Section 3. **Default; Remedies.** If either party fails to perform any of its obligations hereunder and such conditions are not cured within ten days after written notice thereof by the non-defaulting party, the defaulting party shall be in default, thereby entitling the non-defaulting party to proceed at law and in equity to enforce its rights under this Agreement.

Section 4. **General Provisions.**

(a) **Survival.** The parties' respective rights and obligations hereunder, and all representations and warranties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(c) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(d) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(e) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(i) **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Notice. All notices provided for herein shall be in writing and shall be given by first-class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Costs. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party which has incurred such costs and expenses.

(m) Exhibits. The exhibits that are referenced herein and that are attached hereto are an integral part of this Agreement and are incorporated herein by reference.

(n) Integration Clause. There are no representations, warranties, covenants or agreements between the parties as to the subject matter of this Agreement except as are specifically set forth in this Agreement. This Agreement contains the entire agreement between the parties hereto pertaining to the matters that are set forth herein and supercedes all prior agreements, correspondence, memorandum, representations and understandings of the parties related thereto.

(o) Each individual executing this Agreement does thereby represent and warrant to any other individual so signing (and to each other entity for which another individual is signing) that the individual has been duly authorized to deliver this Agreement in the capacity and for the entity that is set forth where he signs.

DATED effective the date first written above.

CITY:

ATTEST:

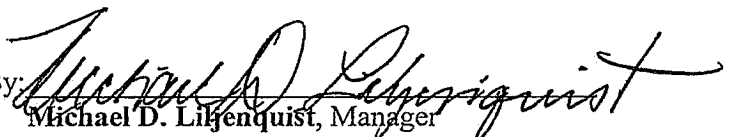
COTTONWOOD HEIGHTS, a Utah municipality

Linda W. Dunlavy, Recorder

By _____
Kelvyn H. Cullimore, Jr., Mayor

OWNER:

FOURELS INVESTMENTS CO., LLC,
a Utah limited liability company

By: 
Michael D. Liljenquist, Manager

594720.1